

IOWA DEPARTMENT OF NATURAL RESOURCES ADMINISTRATIVE ORDER

IN THE MATTER OF:**HARRY AMBROSE****NPDES General Permit No. 2
Authorization No. 17164-16992****ADMINISTRATIVE
ORDER****NO. 2010-WW-16**

TO: Harry Ambrose
P.O. Box 559
North Liberty, Iowa 52317

Harry Ambrose
1918 South Ridge Drive
Coralville, Iowa 52241

I. SUMMARY

This administrative order (order) is issued to Harry Ambrose due to storm water violations concerning the Rosewood development project, located along Curtis Bridge Road, North Liberty, Iowa. The order requires Harry Ambrose to maintain coverage under National Pollutant Discharge Elimination System (NPDES) General Permit No. 2 (General Permit No. 2) and to comply with the requirements of General Permit No. 2 for the Rosewood development project. This order assesses a \$3,000.00 administrative penalty.

Questions or responses regarding this order shall be directed to:

Relating to technical requirements:

Russell Royce, Environmental Specialist
IDNR Field Office No. 6
1023 West Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Relating to legal requirements:

Diana Hansen, Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515/281-6267

Payment of penalty to:

Iowa Department of Natural Resources
Wallace State Office Building, 502 E 9th Street
Des Moines, Iowa, 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued

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pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On April 9, 2009 the Department's Field Office No. 6 received a complaint from the Johnson County Planning and Zoning Office (County). The complaint alleged that Harry Ambrose was developing an area along Curtis Bridge Road, North Liberty, Iowa. The County's complaint indicated that no storm water best management practices (BMP's) had been installed and that there was no record of Mr. Ambrose obtaining General Permit No. 2 coverage from the Department. It was alleged that silt was leaving the site. The County was concerned that the activity on the site could be affecting sensitive species.

2. A Field Office No. 6 (FO 6) environmental specialist inspected the site on April 16, 2009. A County staff person accompanied the FO 6 environmental specialist on the inspection. At the entrance to the development area, the inspectors observed a sediment basin that appeared to be discharging silt into a public road ditch. The public road ditch was next to Curtis Bridge Road in Johnson County. Harry Ambrose arrived later and discussed the problems observed by the inspectors. Mr. Ambrose admitted that he had not obtained authorization for the site under General Permit No. 2. He also admitted he had not conducted inspections at the site. The County inspector informed Mr. Ambrose that he had not filed a complete application with the County to obtain a building permit.

3. On April 24, 2009 FO 6 issued a Notice of Violation (NOV) letter and inspection report to Harry Ambrose. The NOV was based on the April 16, 2009 inspection of the Curtis Bridge Road development project. The NOV noted three areas of noncompliance observed during the inspection. Mr. Ambrose had not obtained authorization under General Permit No. 2 for the construction site and had not conducted inspections required of the site under a storm water pollution prevention plan (SWPPP). The third area of noncompliance was due to silt moving off the site area into the adjacent public road ditch along Curtis Bridge Road.

The April 24, 2009 NOV letter required Harry Ambrose to apply for coverage under General Permit No. 2 from the Department and to begin conducting inspections of the construction site. Mr. Ambrose was required to stabilize the construction site to prevent silt from leaving the site and being washed onto adjacent property.

4. The development is located in the SE ¼ Section 22, T81N, R7W, which is in Johnson County, Iowa. At the time of the April 16, 2009 inspection, the property was owned by Craig F. Okerberg and Sharon L. Okerberg, 1785 Curtis Bridge Road NE, North Liberty, Iowa 52317. The Notice of Intent to be covered under NPDES General Permit No. 2 stated that Harry Ambrose was the owner of the project by contract. Harry Ambrose signed the Notice of Intent on May 5, 2009.

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5. By a letter dated May 1, 2009, Harry Ambrose agreed to apply for authorization under General Permit No. 2 and to submit an erosion plan. Mr. Ambrose stated that on April 23, 2009 he wrapped silt fence around the tubes located on Curtis Bridge Road and the pond next to Curtis Bridge Road. He also stated that he inspected the fences following several days of rain and that the fences held with no visible evidence of erosion. Mr. Ambrose maintained in his letter that the berms that were present during the April 16, 2009 inspection held during and after the rains. The letter further stated that Mr. Ambrose would continue to maintain the fences in good repair.

6. The Department received a Notice of Intent for NPDES coverage under General Permit No. 2 from Harry Ambrose on May 7, 2009 and final payment of all required fees on May 19, 2009. The Notice of Intent stated that underground utilities would be installed from April 2010 through August 2010, that streets would be paved during September 2010 and that the area would be seeded and stabilized by November 2010. According to the Notice of Intent, homes would be constructed from April 2011 through 2020. The Department notified Harry Ambrose by a letter dated May 21, 2009 of general permit coverage under General Permit No. 2, Authorization No. 17164-16992, for a construction project identified as Rosewood, located at 1790 Curtis Bridge Road NE, North Liberty, Iowa 52317, in Johnson County, Iowa.

7. FO 6 sent letters to Harry Ambrose concerning other storm water complaints on May 5, 2006 and on July 23, 2007. Letters from both visits indicated that storm water controls were not adequate and that silt was moving off the properties being developed. The projects at issue were covered under General Permit No. 2 and had received authorization from the Department.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge, at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading and excavation activities. Excluded are operations that result in the disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.

2. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm

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Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary. The above stated facts show noncompliance with these provisions since Harry Ambrose did not obtain General Permit No. 2 coverage for the Rosewood development project along Curtis Bridge Road, North Liberty, Iowa, Johnson County, prior to beginning construction activities in April 2009.

3. General Permit No. 2, Part IV, provides that the permittee must develop and implement a SWPPP in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the SWPPP. Disturbed areas must be stabilized within 14 days if no construction activity will take place within 21 days. It does not appear that Harry Ambrose had developed a SWPPP at the time of the April 16, 2009 inspection as required by General Permit No. 2 for storm water construction activities.

Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department. A copy of the plan is required to be furnished to the Department upon request. Qualified personnel must inspect disturbed areas and erosion and sediment control measures at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Reports summarizing the inspections must be made and maintained as part of the plan. Part V of the permit requires that a copy of the plan and reports be retained at the construction site or alternative site approved by the Department. Part VI, E, requires the permittee to furnish any information requested by the Department to determine compliance or to furnish any records required to be kept within a reasonable time. Mr. Ambrose admitted during the April 16, 2009 inspection by FO 6 and the County that he had not been conducting the inspections required by General Permit No. 2 and a SWPPP.

V. ORDER

THEREFORE, the Department hereby orders Harry Ambrose to do the following:

1. You are required to maintain coverage under the Department's General Permit No. 2 for storm water for the Rosewood development project along Curtis Bridge Road, North Liberty, Iowa for the duration of the project. You are required to comply with the conditions and requirements of General Permit No. 2, including developing and maintaining a SWPPP and conducting inspections, for the Rosewood project along Curtis Bridge Road, North Liberty, Iowa for the duration of the project.

2. You are assessed an administrative penalty of \$3,000.00. The penalty is required to be paid to the Department within 60 days after receipt of this order.

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VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties for the storm water violations involved in this matter and authorizes referral to the Attorney General for enforcement at the Director's request. More serious criminal sanctions are also available pursuant to that Code provision.

In addition, Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties for violations that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of an administrative penalty.

a. Economic Benefit- The failure of Harry Ambrose to obtain coverage under the Department's General Permit No. 2 resulted in cost savings to Mr. Ambrose due to not developing a SWPPP, not implementing BMP's and not performing inspections required under General Permit No. 2 from the beginning of the construction project. The amount of \$1,000.00 is assessed for this factor.

b. Gravity of the Violation- One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by the water quality statute. Obtaining authorization under General Permit No. 2 is a major requirement of the storm water program for housing developers such as Harry Ambrose. Failure to properly manage storm water runoff from construction sites degrades surface water quality and deposits excess sediment in water channels. Sedimentation of Iowa's waterways is a serious problem, and regulatory agencies have recognized that uncontrolled runoff is a significant contributor to these problems. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Harry Ambrose has had prior contacts from FO 6 concerning storm water compliance. The amount of \$1,000.00 is assessed to Harry Ambrose for this factor.

c. Culpability- Harry Ambrose, the developer of this housing project, had the obligation to be aware of the legal requirements for obtaining required permits, including obtaining coverage under the general storm water permit and compliance with General Permit No. 2 requirements. The Department has contacted Harry Ambrose in prior years concerning storm water compliance issues. The Department finds that Harry Ambrose should be assessed the amount of \$1,000.00 for the culpability factor.

d. Summary- The total amount assessed for the above factors is \$3,000.00.

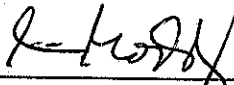
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VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section "V. Order" constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



PATRICIA L. BODDY, ACTING DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 30 day of
Sept, 2010

Harry Ambrose- General Permit No. 2 Authorization No. 17164-16992, Russell Royce-
Field Office No. 6, Diana Hansen- Legal Services, U.S. EPA- Drinking Water, U.S.
EPA- Wastewater, I.C. 7 a. and I.C. 7 b.